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FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

SEP - 1 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket 92-201

In the Matter of )  
 )  
Order to Show Cause )  
Directed Against )  
 )  
MARIO J. GABELLI )  
 )  
and )  
 )  
GABELLI FUNDS, INC. )

ORIGINAL  
FILE

TO: Honorable Joseph Stirmer  
Chief Administrative Law Judge

PETITION FOR LEAVE TO INTERVENE

Garden State Broadcasting Limited Partnership (Garden State), by its attorneys, and pursuant to Section 1.223 of the Commission's rules, now petitions for leave to intervene in the above-captioned proceeding.

As detailed in the attached declaration of John J. Schauble, Garden State is an applicant for a new commercial television station on Channel 9 at Secaucus, New Jersey. Its application is mutually exclusive with the application of WWOR-TV, Inc. for renewal of the license of commercial television station WWOR-TV at Secaucus, New Jersey. The United States Court of Appeals for the District of Columbia Circuit is currently considering Garden State's appeal of a Commission order denying Garden State's application and granting the renewal application of WWOR-TV, Inc. (Case No. 92-1065).

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List A B C D E

On May 14, 1992, an application for the Commission's consent to transfer control of WWOR-TV, Inc. from Pinelands, Inc. to BHC Communications, Inc. was filed. Garden State filed a timely petition to deny the application which showed, inter alia, that Mario Gabelli, a stockholder in Pinelands and BHC, held interests that violated several of the Commission's ownership rules. Garden State also demonstrated that Pinelands had falsely claimed that Gabelli had no media interests.

The Commission instituted this show cause proceeding in response to Garden State's petition to deny and the evidence of rule violations by Gabelli and Pinelands. Despite the evidence of rule violations, the Commission dismissed or denied Garden State's application and granted the transfer of control application. Memorandum Opinion and Order, FCC 92-376 (released August 21, 1992). Garden State has filed with the D.C. Circuit a notice of appeal of the Commission's action with respect to its petition to deny (Case No. 92-1388).

Garden State is a party in interest with a substantial interest in this proceeding. The information obtained in this proceeding will have a significant impact on the judicial proceedings involving Garden State. Garden State will argue in both the renewal and transfer proceeding that it has raised substantial and material questions of fact concerning the qualifications of both Pinelands and BHC to hold the WWOR-TV license. The nature of Gabelli's media interests are relevant

to the arguments Garden State will make in the judicial proceeding concerning Pinelands' qualifications.

Moreover, this proceeding will also adduce evidence relevant to the standard comparative issue in the renewal proceeding. Garden State will argue to the Court that the comparative renewal proceeding must be remanded to the Commission for a full hearing on the comparative qualifications of itself and WWOR-TV, Inc. Any media interests held by Gabelli as companies under his control at any point after WWOR-TV, Inc. filed its renewal application would count against WWOR-TV, Inc. in the comparative analysis. Garden State thus has a special interest in compiling a full record concerning Gabelli's media interests.

The Commission has allowed individuals to intervene in cases so that the individuals could protect their reputations. West Jersey Broadcasting Co., 89 FCC 2d 469, 472-473, 48 RR 2d 970, 973 (1980), Quality Broadcasting Corp., 4 RR 2d 865 (1965). In Quality, an individual was allowed to intervene in a revocation proceeding after the issuance of an initial decision that contained negative findings of fact concerning the individual. The case for allowing Garden State to intervene in this proceeding is considerably stronger than the case for intervention in Quality. Unlike the individual in Quality, Garden State has filed a timely petition for leave to intervene. Moreover, while the interest being protected in Quality was the somewhat amorphous interest in a person's

reputation, Garden State has timely filed a competing application which entitles it to full hearing rights under Section 309(e) of the Communications Act and Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945). Garden State's interest in the prosecution of its application is legally more important than the possible harm to reputation involved in Quality. Quality was a revocation proceeding, which is conducted under the same provisions of the Communications Act (Section 312) and the Commission's rules (Section 1.91) as this proceeding. Garden State, therefore, has a cognizable interest justifying intervention in this proceeding.

Garden State's participation will assist the Commission in the determination of the issues in question. It was Garden State that filed the petition to deny that resulted in the proceeding in question. Garden State is familiar with the record generated in the transfer of control proceeding. It intends to conduct a focused inquiry into Gabelli's media interests and the circumstances surrounding the prior failures to report those interests. Since Garden State is the one private party with the strongest incentive to develop a complete record on Gabelli's interests, its participation would assist in the development of a complete record.

The participation of the Mass Media Bureau as a party in this proceeding is not grounds for denying this intervention request. In WFTL Broadcasting Co. v. FCC, 376 F.2d 782, 9 RR 2d 2032 (D.C. Cir. 1967), the Court of Appeals ordered the

Commission to give further consideration to an intervention petition when a four applicant proceeding was transformed into a one applicant proceeding. The Court wrote:

Although the Commission's Broadcast Bureau is the representative of the public interest, from [FCC v. Sanders [Bros. Radio Station, 309 U.S. 470 (1940)] to the present it has been recognized that private parties also can represent the public interest. In referring to the right of a party aggrieved or adversely affected to appeal an FCC decision, Sanders notes that Congress may have been of the opinion that one financially injured may be the only party having a sufficient interest to challenge the Commission.

376 F.2d at 784, 9 RR 2d at 2034-2035. The WFTL opinion recognizes that as a matter of public policy, the presence of adverse private litigants will aid the Commission in developing a complete record and will serve the public interest. Garden State's participation in this proceeding will assist the Commission in this regard.

Section 1.223(b) of the Commission's rules requires that a party seeking intervention "must set forth any proposed issues in addition to those already designated for hearing..." The Order to Show Cause did not designate specific issues for hearing, but the areas that Garden State wishes to inquire into fall within the scope of the Order to Show Cause. Garden State wishes to inquire into (1) all media interests held by Gabelli or entities in which he has an interest since the filing of the WWOR-TV, Inc. renewal application, (2) any inquiries or responses to inquiries addressed to Gabelli or related entities seeking information regarding the media

interests of Gabelli or related entities, and (3) all reports or documents prepared by Gabelli or related entities listing, describing or otherwise relating to media interests held by Gabelli or related entities.

Garden State has met all of the requirements for intervention in this proceeding. Accordingly, Garden State asks the Presiding Judge that it be named a party to this proceeding.

Respectfully submitted,

**GARDEN STATE BROADCASTING LIMITED  
PARTNERSHIP**

By Morton L. Berfield  
Morton L. Berfield

By John J. Schauble  
John J. Schauble

Cohen and Berfield, P.C.  
1129 20th Street, NW, Suite 507  
Washington, DC 20036

Its Attorneys

DATE: September 1, 1992

### DECLARATION

John J. Schauble, under penalty of perjury, declares that the following is true and correct to the best of his knowledge:

I am counsel of record for Garden State Broadcasting Limited Partnership, an applicant for a new commercial television station on Channel 9 at Secaucus, New Jersey (File No. BPCT-871223KG). That application is mutually exclusive with the application of WWOR-TV, Inc. for renewal of the license of WWOR-TV, Secaucus, New Jersey (File No. BRCT-871221KE). Garden State's appeal of the Commission decision denying Garden State's application and granting the WWOR-TV, Inc. renewal application is currently pending before the United States Court of Appeals for the District of Columbia Circuit (Case No. 92-1065). In that appeal, Garden State will argue, inter alia, that substantial and material questions of fact exist concerning the basic qualifications of WWOR-TV, Inc. and its corporate parents. Garden State will also argue that the proceeding must be remanded to the Commission for a full hearing on the comparative qualifications of both Garden State and WWOR-TV, Inc.

On May 14, 1992, an application was filed for the Commission's consent to transfer control of WWOR-TV, Inc. from Pinelands, Inc. to BHC Communications, Inc. On June 18, 1992, Garden State filed a timely petition to deny that application. Garden State showed in its petition to deny that Mario Gabelli, a stockholder in both Pinelands and BHC, held media interests that violated several Commission ownership rules and that Pinelands had falsely certified

on several occasions that Gabelli had no media interests. Garden State requested that a series of basic qualifications issues be specified against both Pinelands and BHC based upon the violations of the Commission's ownership rules and the failures to report those interests.

By Memorandum Opinion and Order, FCC 92-376 (released August 21, 1992), the Commission granted the transfer of control application. Garden State has filed a timely notice of appeal of that action with the United States Court of Appeals for the District of Columbia Circuits (Case No. 92-1388). Garden State will argue in that proceeding, inter alia, that the ownership rule violations and reporting violations raised substantial and material questions of fact concerning the basic qualifications of Pinelands and/or BHC.

All other factual allegations in the "Petition for Leave to Intervene" are true and correct to the best of my knowledge.

September 1, 1992  
Date

John J. Schauble  
John J. Schauble



CERTIFICATE OF SERVICE

I, Brenda E. Domyan, do hereby certify that on the 1st day of September 1992, a copy of the foregoing "Petition For Leave To Intervene" was sent first-class mail, postage prepaid to the following:

Larry A. Miller, Esq.\*  
Hearing Branch  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 7212  
Washington, DC 20554

Mr. Mario J. Gabelli  
Gabelli and Company, Inc.  
One Corporate Center  
Rye, NY 10580

  
Brenda E. Domyan

\* Hand Delivered